

**COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA 1399/2018**

**Swapnil Kumar Pandey S/O  
Late Sunil Kumar Pandey  
VERSUS**

**..... Applicant**

**Union of India and Ors.**

**..... Respondents**

**For Applicant** : Mr. Ajit Kakkar, Advocate with  
Ms. Eti, Advocate  
**For Respondents** : Mr. Prabodh Kumar, Sr. CGSC  
Sgt Pankaj Kumar Yadav,  
DAV Incharge Legal Cell

**CORAM**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

**O R D E R**

The applicant vide the present OA makes the following prayers:-

***"8. RELIEF SOUGHT***

***In the view of the facts mentioned in Para 4 and 5 above, the applicant prays that this this Hon'ble Tribunal may be graciously pleased to allow the present application with cost of passing following orders/directions:-***

***(a) To direct the respondents to place on record all relevant records pertaining to this case.***

***(b) To direct the respondents to dispose of the pending mercy petition of the Applicant submitted in January 2018.***

***(c) To direct the respondents to consider awarding family pensionary benefits to the Applicant.***

***(d) To direct the respondents to pay all back wages.***

***(e) To pass any other order as the Hon'ble court deems fit."***

### **FACTS BROUGHT FORTH ON RECORD**

2. Ex-Cpl (Late) Sunil Kumar Pandey No. 687489-G was enrolled in the Indian Air Force on 03.07.1987 and was dismissed from service w.e.f. 27.07.2005 under the provision of Section 20(3) of the Air Force Act, 1950, read with Rule 18 of the Air Force Rules, 1969. Before dismissal from service he had rendered a total of 17 years and 326 days of qualifying regular service (excluding 64 days of non-qualifying period i.e. 06 days of being absent without leave and 56 days of Civil Custody).

3. In terms of Regulation 121 of the Pension Regulations for the Air Force 1961, Part I, the minimum qualifying regular service for earning service pension is 15 years. However in terms of Regulation 16 (a) of the Pension Regulations for the Air Force 1961, Part I, the President may at the discretion sanction Pension / Gratuity or both at a rate not exceeding that which would have been admissible on retirement/discharge and the

said powers are delegated as indicated vide para 2 of the letter MoD I.D. No. 1(11)/2020/D(Pen/Legal) dated 28.07.2020 which reads to the effect:-

***“2. The power of the competent authority for deciding the aforesaid appeals was delegated to the AG/AOP/COP vide Ministry of Defence, Department of Defence, Order No.4684/Dir(PEN)/2001 dated 14.08.2001. Further, vide Ministry of Defence, Department of Ex-Servicemen Welfare Order No.4(24)/2015/D(Pen/Legal) dated 01.09.2016. Secretary, Department of Ex-Servicemen Welfare [Secretary (ESW)] has been designated as the competent authority for deciding aforesaid mercy appeals which are received beyond the period of two years of cashiering/dismissal/removal from service.”***

4. Even though he had pensionable service to his credit, Ex-Cpl (Late) Sunil Kumar Pandey having been dismissed from service was not granted pensionary benefits at the time of dismissal from service in terms of Regulation 102(a) of the Pension Regulations for the Air Force 1961, Part I. Furthermore, he did not prefer any appeal during his lifetime for grant of pensionary benefits.

5. The present OA has been filed on 13.08.2018 by Mr. Swapnil Pandey and Ms. Srishti, son and daughter respectively of Ex-Cpl (Late) Sunil Kumar Pandey who passed away on 10.06.2016. As per the records of the respondents the family details of Ex-Cpl (Late) Sunil Kumar Pandey are as under:-

“

<b>S. No.</b>	<b>Name</b>	<b>Relation</b>	<b>Age/DoB</b>
(i)	<i>Sadhna Rai</i>	<i>Wife</i>	<i>Pre-deceased</i>
(ii)	<i>Swapnil Pandey</i>	<i>Son</i>	<i>10 Mar 1996</i>
(iii)	<i>Srishti</i>	<i>Daughter</i>	<i>09 Mar 1997</i>

”

6. In terms of Rule 12 of the Armed Forces Tribunal (Procedure) Rules 2008 read with Order VIII Rule 3 and Order VIII Rule 5 (1) of the CPC 1908 as amended, the pleadings on record through the OA and non repudiation of facts averred therein by the respondents through their counter affidavit dated 01.10.2018 bring forth the following facts:-

- that an FIR No. 140/2002 P.S. Kidwainagar, Kanpur was registered against the Ex-Cpl (Late) Sunil Kumar Pandey;
- he was granted Bail on 20.01.2002;
- he rejoined his duty at 310 TRU, Air Force Station Maharajpura, Gwalior on 21.01.2003;
- A show cause notice was issued to him and he was dismissed from service on 25.07.2005;
- He filed WP (C) 13235/2006 in the High Court of Judicature, Allahabad praying for a stay on the operation of the order of dismissal and also filed an appeal under Section 26 of the Air Force Act 1950.

- Pursuant to directions dated 03.03.2006 of the Hon'ble High Court of Judicature at Allahabad in WP (C) 13235/2006 directing the Chief of Air Staff to consider and decide the statutory petition of Ex-Cpl (Late) Sunil Kumar Pandey RAD/FIT against the dismissal order dated 25.07.2005 passed by the AOC-in-C HQ CSC IAF requesting that it be set aside, vide a speaking order No. Air HQ/C23407/1500/PS dated 05.05.2006 issued by the Chief of the Air Staff, the representation dated 08.09.2005 of Ex-Cpl (Late) Sunil Kumar Pandey was rejected;
- Ex-Cpl (Late) Sunil Kumar Pandey was acquitted of all charges against him in relation to the Criminal Case No. 246/2002 under Sections 386, 420, 467, 468 and 471 of the IPC, 1860 in the case registered at Police Station Kidwainagar, Kanpur vide judgment dated 26.02.2015 by the Court of Special Chief Judicial Magistrate, Kanpur Nagar;
- Before making any appeal for rejoining in service or for pensionary benefits, Ex-Cpl (Late) Sunil Kumar Pandey had passed away on 10.06.2016;
- A representation dated 14.07.2016 was made by Mr. Swapnil Pandey and Ms. Srishti, son and daughter of Ex-

Cpl (Late) Sunil Kumar Pandey requesting for release of arrears, pay and allowances and pension of their late father apprising the Chief of the Air Staff that they were dependents on their father and were in dire straits and that their father had since been acquitted but could not appeal against his dismissal to the IAF as he had been diagnosed with brain cancer (Grade IV) and was terminally ill and bedridden and had expired on 10.06.2016. They also submitted that their late mother had pre-deceased their father on 02.11.2008 and that their grandmother, a widow had been taking care of them despite her ill health and old age;

- The said representation dated 14.07.2016 of the applicants was rejected by the Air Force Authorities vide letter No. Air HQ/C 23401/109/53/Discip dated 20.07.2017 stating to the effect:-

*“4. In view of the above facts, the said representation is considered and rejected by the appropriate authority at this HQ as being devoid of merit for the following reasons:-*

*(a) The dismissal from service of your late father was affected not solely based on the criminal case but under the provisions of AF Law independent of the Criminal proceedings.*

*(b) The allegations were investigated by AF Authorities and during the investigation the Late Cpl had confessed to Cpl Thomas to have made threatening calls to Dr Pathak on instructions from his course mate LAC Kumar, Rad Fit vide his statement dated 14 Nov 02. In the said statement he also narrated how he disposed of the SIM card which was used for making such calls. Moreover, Dr Pathak identified the voice of the Late Cpl SK Pandey. Therefore, there is enough evidence on record to establish misconduct of the deceased corporal.*

*(c) The acquittal of the deceased air warrior was based on the failure of the prosecution to prove the case beyond reasonable doubt. The scope or departmental proceedings and the scope of criminal proceedings in a Court of criminal law are quite distinct, exclusive and independent of each other. The standard of proof required in the criminal proceedings and the departmental disciplinary actions are not the same.*

*(d) The dismissal was an administrative action taken based on material available on record at the relevant time and the acquittal in criminal proceedings by Court of Special Chief Judicial Magistrate, Kanpur Nagar dated 26 Feb 15 has no bearing on the dismissal.*

*(e) The said dismissal was challenged before the Hon'ble High Court of Judicature at Allahabad vide a Civil Misc Writ Petition No. 13235/2006 and pursuant to the orders dated 03 Mar 06 of the Hon'ble Court, the contentions of your Late father's statutory petition dated 08 Sep 05 under Sec 26 AF Act were considered by the CAS and a speaking order dated 05 May 06 was issued.*

*(f) The said order was not further challenged before any judicial forum by your father during his life time. Thus, the dismissal attained finality and the documents pertaining to the case have been destroyed as per the policy in vogue. Hence, no relief can be granted at this belated stage.*

*5. Be that as it may, you may prefer a mercy petition to the Hon'ble President of India for grant of family pension."*

- Thereafter, the applicants filed OA 1884 of 2017 before the AFT (PB) New Delhi on 06.11.2017. We have requisitioned the records of OA 1884 of 2017 from the Registry for perusal and the same have been so perused by us. The prayers made therein as per the said records of OA 1884/2017 were to the effect:-

***“8.a) To direct the respondents to place all relevant records pertaining to this case.***

***b) To direct the respondents to quash the Order of Dismissal dated 25.07.2005 and dated 20.07.2017 passed against the Applicant's father.***

***c) To reinstate the father of applicant notionally into service granting consequential benefits.***

***d) To direct the respondents to pay all back wages as applicable to the***

***e) To convert the order dismissal to discharge, and award all retirement and pensionary benefits to the Applicant's family.***

***f) To pass any other order as the Hon'ble court deems fit.”***

- The said OA 1884/2017 vide order dated 15.11.2017 of the AFT(PB), New Delhi was permitted to be withdrawn with liberty granted to the applicants thereof to move an application for relief of pension and other allowances under Regulation 102(a) of the Pension Regulations for



the Air Force 1961, Part I, before the authority concerned with directions therein to the effect that in the event of such an application / representation being made in accordance with the Pension Regulations for the Air Force, the same would be accorded consideration preferably within four months from the date it is received by the authority concerned.

- A mercy petition for grant of pensionary and other retirement benefits was thereafter submitted by the applicants in January 2018 to the Hon'ble President of India and thereafter a reminder dated 03.05.2018 in relation thereto was also sent to the Principal Director, DAV on 03.05.2018. There being no response received to the mercy petition submitted by the applicants in January 2018 by the applicants, the present OA was instituted on 13.03.2018 by the applicants with the prayers made therein as already adverted to hereinabove in para 1.
- On 23.08.2018 when the present OA 1399/2018 was taken up for consideration, the respondents submitted a document dated 28.03.2018, copy of which is also annexed as an Annexure R-1 to the counter affidavit of

the respondents bearing no. Air HQ/99798/2/687489/30154 HD/FP DAV which stated therein to the effect:-

*“1. Reference is made to your representation dated 30 Dec 17.*

*2. It is intimated that the above named individual was enrolled in IAF on 03 Jul 1987 and DISMISSED from service on 27 Jul 2005. As per service records, no pensionary benefits had been sanctioned to him.*

*3. As per the policy, family pension is granted to wife/eligible children of the retired service personnel who are in receipt of any kind of pension at the time of his death. Since, the individual was not in receipt of any kind of pension at the time of his death, therefore, you are not eligible to receive family pension. Notification to release financial benefits if applicable is annexed with this letter.”*

- In view of the representation of the applicants having not found favour with the Competent Authority, notice of the present OA was issued to the respondents vide order dated 23.03.2018.

### **CONTENTIONS OF THE PARTIES**

7. The applicants contend that in view of the acquittal of their late father in Criminal Case No. 246/2002 in relation to FIR No. 140/2002 P.S. Kidwainagar, Kanpur vide order dated 26.02.2015 of the Court of Special Chief Judicial Magistrate, Kanpur Nagar, the dismissal of their late father ought to have been set aside by the Air Force Authorities.

8. *Inter alia*, the applicants submit that the contention of the respondents that family pension cannot be granted to them as their father was not in receipt of any pension at the time of his death cannot be a ground to disentitle them to the arrears of pension and other retirement benefits that accrued to their late father.

9. The respondents through their counter affidavit have placed reliance on the document no. Air HQ/99798/2/687489/30154 HD/FP DAV dated 28.03.2018 which gives the details of NOK of the deceased as under:-

“1..  
(a)...  
(b) *Details of NOK*  
*Particulars of NOK with relationship*  
*and address as per records*

Smt Sadhna Pandey (predeceased)	Swapnil Pandey	Son	10 Mar 1996
	Srishti	Daughter	09 Mar 1997

(c) *Cause of discharge – Dismissed from IAF under Section 20(3) of AF Act 1950, read with Rule 18 of AF Rules 1969.*

2. *There is no eligible heir to receive family pension.”\_*

and reiterated to the effect that thereby there is no eligible heir to receive family pension.

10. The respondents thus reiterate that there is no provision in the Pension Regulations for the Air Force 1961, Part I and II, for grant of family pension to the widow or children or an individual who was not in receipt of any kind of pension at the time of his death. *Inter alia*, the respondents submit that the claim of the applicants for pension is delayed by almost 13 years and ought to be dismissed on the grounds of delay and latches. *Inter alia*, the respondents have submitted to the effect that the consideration of the mercy appeal of the applicants i.e. the children of Ex-Cpl (Late) Sunil Kumar Pandey for grant of family pension cannot be acceded to as the same is against the statutory provisions issued by the Government of India on the subject.

### ***ANALYSIS***

11. The facts of the instant case as reproduced hereinabove in para nos. 2 to 6 clearly bring forth that the dismissal of the late father of the applicants vide order No. CAC/C 2702/3/1/ P1 dated 25.07.2005 was by the Air Officer Commanding-in-Chief, Central Air Command, Indian Air Force in exercise of powers vested in him under Section 20(3) of Air Force Act, 1950, read with Rule 18 of Air Force Rules 1969, against which the

statutory complaint of Ex-Cpl (Late) Sunil Kumar Pandey dated 08.09.2005 was rejected by the Chief of Air Staff vide a speaking order No. Air HQ/C23407/1500/PS dated 05.05.2006 and the same was apparently on the basis of the criminal prosecution lodged against Ex-Cpl (Late) Sunil Kumar Pandey RAD/FIT vide registration of FIR No. 140/2002 lodged at Police Station Kidwainagar, Kanpur in which subsequently Criminal Case No. 246/2002 was filed under Section 386 of the IPC, 1860.

**12. That the father of the applicants was acquitted in relation to all allegations levelled in FIR 140/2002 Police Station Kidwainagar, in Criminal Case No. 246/2002 vide judgement dated 26.02.2015 of the Court of Special Chief Judicial Magistrate, Kanpur Nagar, in relation to allegations under Sections 386, 420, 467, 468 and 471 of the IPC, 1860 is not refuted by the respondents.** Though, vide paragraph 11 (f) of the Speaking Order No. Air HQ/C23407/1500/PS dated 05.05.2006 it was observed as under:-

***“(f) The order of dismissal is issued by the competent authority u/s 20(3) Air Force Act, 1950 read with Rule 18 of Air Force Rules, 1969 without prejudice to any criminal proceedings under the civil law;”***

the respondents through their counter affidavit have not brought forth any other cause of dismissal of Ex-Cpl (Late) Sunil Kumar Pandey from the Indian Air Force other than the alleged extortion calls made by the late father of the applicants in relation to which FIR 140/2002 PS KidwaiNagar and subsequently Criminal Case No. 246/2002 PS KidwaiNagar had been filed against him.

13. Thus there is nothing to indicate any blemish in the service of the late father of the applicants with the Air Force apart from the criminal prosecution launched against him in relation to which he has already been acquitted as observed in para 12 herein above vide judgment dated 26.02.2015 of the Court of Special Chief Judicial Magistrate, Kanpur Nagar.

14. It is essential to advert to the observations of the Hon'ble Supreme Court in the case of ***Maharana Pratap Singh versus The State of Bihar and others*** in Civil Appeal 5497 of 2025 arising out of SLP (C) 9818 of 2017 dated 23.04.2025 whereby it was observed vide para 47 to the effect:-

***“47. While an acquittal in a criminal case does not automatically entitle the accused to have an order of setting aside of his dismissal from public service following disciplinary proceedings, it is well-established that when the charges, evidence,***

**witnesses, and circumstances in both the departmental inquiry and the criminal proceedings are identical or substantially similar, the situation assumes a different context. In such cases, upholding the findings in the disciplinary proceedings would be unjust, unfair, and oppressive. This is a position settled by the decision in G. M. Tank (supra), since reinforced by a decision of recent origin in Ram Lal v. State of Rajasthan.”**

15. The verdict of Hon’ble Supreme Court in **G.M. Tank vs State of Gujarat and Others** (2006) 5 SCC 446 dated 10.05.2006 vide para 31 and 32 thereof observes to the effect:-

**“31. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony’s case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.**

**32. In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8.2.1979 and got subsistence allowance of Rs.700/- p.m. i.e. 50% of the salary. On 15.10.1982 dismissal order was passed. The appellant has put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in**

**February, 1986. On the basis of the same charges and the evidence, the Department passed an order of dismissal on 21.10.1982 whereas the Criminal Court acquitted him on 30.1.2002. However, as the Criminal Court acquitted the appellant on 30.1.2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30.1.2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension.”**

16. Thus, the contention of the applicants that the representation made by them for the grant of pensionary benefits to the applicant's father till his demise and family pension to the applicants as per rules has not been considered appropriately, cannot be ignored and has to be accepted. In the circumstances of the instant case, in view of the verdicts of the Hon'ble Supreme Court in **Maharana Pratap Singh versus The State of Bihar and others** (supra) and **G.M. Tank vs State of Gujarat and Others** (supra), the rejection of the application dated 14.07.2016 of the applicant vide letter No. Air HQ/C 23401/109/53/Discip dated 20.07.2017 was not warranted.

17. It is further essential to observe that vide judgment dated 10.10.2025 in Criminal Appeal 628 of 2016 in the case of **Sk Jain vs Union of India & ANR** the Hon'ble Supreme Court has



upheld the exercise of jurisdiction by the Armed Forces Tribunal in terms of Section 15 (6) of the AFT Act 2007, where it is just and proportionate to balance disciplinary needs of service with the fairness to the individual to modify the punishment from dismissal to compulsory retirement with all pensionary and retirement benefits. Undoubtedly, though, the said judgement relates to the exercise of jurisdiction by the Armed Forces Tribunal in terms of section 15 (6) of the AFT Act 2007 which relates to orders, decisions, findings and sentences in relation to court martials, in terms of Section 14 of the AFT Act 2007, the Armed Forces Tribunal is vested with all powers and authority exercisable immediately before the appointed day by all courts except a Supreme Court or a High Court exercises jurisdiction under Article 226 and 227 of the Constitution of India in relation to all service matters in terms thereof read with Rule 25 of the Armed Forces Tribunal (Procedure) Rules 2008 which provides to the effect:-

***“25. Powers of the Tribunal with regard to certain orders and directions.— Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”,***\_

the powers of the Armed Forces Tribunal are thus not limited, and the Armed Forces Tribunal is vested with inherent powers to make such orders or give such directions as may be necessary or expedient to secure the ends of justice.

18. The available facts on the record in the instant case and the ends of justice speak eloquently to the effect that the dismissal of the late father of the applicants in the instant case has essentially to be modified and converted to read to that of discharge from the Air Force from the date when he would be discharged on attaining the age of retirement after deemed notional reinstatement with effect from 27.07.2005.

19. We thus consider it appropriate in the circumstances of the instant case in view of acquittal of Ex-Cpl (Late) Sunil Kumar Pandey in FIR No. 140/2002 and Criminal Case No. 246/2002 vide order dated 26.02.2015 of the Court of Special Chief Judicial Magistrate, Kanpur Nagar, to convert the order of dismissal of the late father of the applicants into discharge w.e.f. 25.07.2005.

20. The late father of the applicants having completed the minimum qualifying regular service for earning service pension of 15 years having rendered a total of 17 years and 326 days of

regular qualifying service into which we consider appropriate to add 56 days of civil custody in relation to which Ex-Cpl (Late) Sunil Kumar Pandey has already been acquitted, he is held entitled to the grant of all pensionary benefits and gratuity due to him for the period of 17 years and 390 days i.e. of 18 years and 25 days of qualifying regular service.

21. The factum of the demise of Ex-Cpl (Late) Sunil Kumar Pandey on 10.06.2016 is not refuted by the respondents and is established by the death certificate placed on record by the applicant bearing Registration No. DC6612016 issued as per the records of deaths by the Delhi Cantoment Board of District South-West of the NCT of Delhi. The contention raised by the respondents to the effect that as per their policy, family pension is granted to the wife / eligible children of the retired service personnel who are in receipt of any kind of pension at the time of death and as the late father of the applicants was not in receipt of any kind of pension at the time of his death, the applicants were not eligible to receive family pension,- is wholly unfounded in view of the settled law as observed vide order dated 01.10.2019 of the Larger Bench of this Tribunal in OA 1238/2016 with MA 923/2016 in the case of **Smt Shama Kaur vs Union of India and others** and in OA 272/2018 with

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MA 1066/2018 in the case of ***Ex Nk Vijay Singh vs Union of India and others*** wherein one of the questions placed before the said Larger Bench was in relation to an application being filed for grant of second pension of DSC service by the widow of the employee and the time within which it may be so done which was answered vide para 48 of the said order reproduced in para 22 herein below.

22. Furthermore, the said aspect has also been adjudicated upon by this Tribunal vide order dated 06.02.2025 in OA 1067/2017 with MA 809/ 2017 in the case of ***Smt Indira Othiyil vs Union of India and others*** to similar effect observing vide para 26 thereof that the contention raised by the respondents in the said case that as the deceased was not in receipt of any pension, the applicant thereof i.e. his widow was not entitled to family pension had to be negated. Para 26 of the said order in ***Smt Indira Othiyil*** (supra) reads to the effect:-

*“26. Significantly, questions (b) and (c) framed by the Larger Bench on 24.04.2018 in OA 1238/2016 and OA 272/2018 in Smt. Shama Kaur v. UOI & Ors. and in Ex. Nk. Vijay Singh vs. UOI & Ors. respectively states to the effect:*

*“(b) Should the application for condonation of deficiency of service ought to be made by the official during his lifetime, if not, within how much time it should be made?”*

**(c) Can such an application be filed by the widow of the employee, if so, within how much time it must be done?"**

*were answered vide para 48 (ii) thereof of the order dated 01.10.2019 therein to the effect:*

**"48. ...**

**(ii) Clubbing point of reference (b) and (c), it is held that widows of defence personnel have the right to approach this Tribunal to claim pension or family pension in consequence to the claim of pension qua deceased employees which falls within the definition of "service matter" under the Act and this right is provided by Section 2(2) of the Armed Forces Tribunal Act, 2007. Though there is no applicability of limitation in continuing wrongs and recurring causes of action, the arrears of pension, in the specific cases of condonation of shortfall, would however have to be restricted from 14.08.2001 as already directed in Paragraph 12 of *Surender Singh Parmar*(supra) which is binding on us. Further, the claims of dual family pension (in addition to the first family pension) would have to be restricted from 24.09.2012, as already provided by Ministry of Defence letter dated 17.01.2013 (supra)."**

*It is thus apparent that the contention raised by the respondents vide letter 22.05.2019 that as the deceased was not in receipt of any pension, the applicant too was not entitled to family pension has to be negated."*

23. To similar effect is the order dated 27.05.2025 of this Tribunal in OA 1058/2019 with MA 1732/2019 in the case of ***Smt Ramesh Devi Wd/O Late Gnr Ishwar Singh vs Union of India and others***. The applicants are thus entitled to the grant of family pension, if eligible, as per rules and cannot be

debarred from the same merely because their father was not in receipt of any kind of pension at the time of his demise.

24. The order dated 31.07.2023 in OA 672/2020 with MA 800 of 2020 in the case of **Smt. Guddi Bisht Wd/o Late Hav Puran Chandra Singh Bisht vs UOI & Ors** vide the verdict of the Hon'ble High Court of Delhi in WP (C) 16268/2025 in **UOI & Ors vs Smt. Guddi Bisht W/o Late Hav Puran Chandra Singh Bisht** was upheld, whereby the applicant therein was held entitled to the grant of special family pension from the date of demise of her late husband in view of the law laid down by the Hon'ble Supreme Court in **S.K.Mastan Bee vs General Manager, South Central Railway and Another (2003) 1 SCC 184** dated 04.12.2002 to the effect that it is the obligation on the employer to compute the family pension and to offer the same to the widow of the employee as soon as it becomes due to her and merely because the widow of the employee did not agitate her rights earlier she cannot be deprived of the same. The observations of the Hon'ble Supreme Court in paras 5 to 7 of the said verdict are to the effect:-

***“5. In this appeal, the appellant questions this restriction on her right to claim family***

*pension w.e.f. 21.11.1969, the date on which her husband died. It is submitted on behalf of the appellant that the Division Bench having agreed with the learned Single Judge on the legal right of the appellant to receive family pension ought not to have confined the said right to a date much subsequent to the death of her husband, merely because a demand for payment of family pension was made only in the year 1992. Learned counsel for the appellant pointed out from the judgment of the Division Bench itself that it had held that the denial of family pension to the appellant amounted to violation of her fundamental right to life guaranteed under Article 21 of the Constitution and that the Division Bench had also held that in the circumstances of this case the delay in approaching the railway authorities cannot be considered to be fatal for the maintainability of the writ petition. The learned counsel submitted, based on these findings, that the Division Bench could not have restricted the appellant's claim to a date much subsequent to the date of death of her husband. Per contra, the learned counsel for the railways contended that the delay in approaching the court was so large that it was not a fit case for the exercise of the discretionary remedy under Article 226 of the Constitution and that the High Court was in fact very generous to the appellant in granting the relief from the year 1992.*

*6. We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer, viz., Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving*

*her to a litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the Railways. Question then arises on facts and circumstances of this case, the Appellate Bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension ? In this case as noticed by us herein above, the learned Single Judge had rejected the contention of delay put forth by the Railways and taking note of the appellant's right to pension and the denial of the same by the Railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned Single Judge observed that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal inspite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate. The learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it*



***became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992.***

***7. In the said view of the matter, we allow this appeal, set aside the impugned order of the Division Bench to the extent that it restricts the right of the appellant to receive family pension only from 1.4.1992 and restore that right of the appellant as conferred on her by the learned Single Judge, that is from the date 21.11.1969. The Railways will take steps forthwith to compute the arrears of pension payable to the appellant w.e.f 21.11.1969 and pay the entire arrears within three months from the date of the receipt of this order and continue to pay her future pension.”***

25. Thus, the applicants whose dates of birth are as under:-

***(i) Swapnil Pandey - 10 Mar 1996***

***(ii) Srishti - 09 Mar 1997***

are entitled to the grant of Ordinary Family Pension as due to them as per rules from the next day after demise of their late father who expired on 10.06.2016 w.e.f. 11.06.2016 as per Regulation 192 of the Pension Regulations for the Air Force 1961, Part I, in view of the factum that the grant of Ordinary Family Pension has to run from the date of demise of the deceased armed force personnel as held vide order dated 03.07.2023 of this Tribunal in OA 672/2020 in ***Smt Guddi***

***Bisht Widow of Late Hav Puran Chandra Singh Bisht vs***

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**UOI & Ors** and upheld by the Hon'ble High Court of Delhi vide order dated 27.10.2025 in **UOI & Ors vs Smt Guddi Bisht W/O Late Hav Puran Chandra Singh Bisht** in WP (C) no 16268/2025.

26. As regards, the prayer made by the applicants seeking payment of all back wages, it is essential to advert to the verdict of the Hon'ble Supreme Court in **UOI and Ors vs Jaipal Singh** (2004) 1 SCC 121 dated 03.11.2003 vide paras 4 and 5 observes to the effect:-

***4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person***

***convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.***

***5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The re-instatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.”***

Thus, the applicant's late father is deemed to be notionally reinstated into service and his dismissal from service i.e. on 27.07.2005 is converted to discharge from service and though he is held entitled to service pension, gratuity and all other consequential benefits, he would not be entitled to any back wages.

## **CONCLUSION**

27. In view of above analysis, the OA 1399/2018 is **allowed** as under:-

- the applicant's late father is deemed to be notionally reinstated into service and his dismissal from service i.e. on 27.07.2005 is converted to discharge from service and though he is held entitled to service pension, gratuity and all other consequential benefits, he would not be entitled to any back wages.

28. The applicants i.e. Mr. Swapnil Pandey and Ms. Srishti, son and daughter respectively of Ex-Cpl (Late) Sunil Kumar Pandey are thus held entitled to the grant of Ordinary Family Pension as available to them in terms of the Pension Regulations for the Air Force 1961, Part I, from the next date after the demise of their father who expired on 10.06.2016.

29. In as much as vide proceedings dated 19.09.2025, the aspect of the applicability of MACPS was also considered, the respondents on 23.01.2026 produced the records to the effect that the Ex-Cpl (Late) Sunil Kumar Pandey had passed the SGT

Part 1 examination held in February 1994 for promotion to the rank of SGT and had also passed the examination for promotion to SGT as effective on 05.02.2001.

30. The respondents are thus also directed to grant the benefit of the MACPS to the Ex-Cpl (Late) Sunil Kumar Pandey, if found eligible, for the same as per rules in the rank of SGT.

31. There is no order as to costs.

Pronounced in the open Court on the 6<sup>th</sup> day of February, 2026.

**[RASIKA CHAUBE]**  
**MEMBER (A)**

**[JUSTICE ANU MALHOTRA]**  
**MEMBER (J)**

AP